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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

§

DOCKET NO. INC. 15-936

Taxpayer,

§

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This appeal involves final assessments of 2010, 2011, and 2012 income tax entered by the Revenue Department against the above Taxpayer. The Taxpayer appealed to the Tax Tribunal pursuant to *Code of Ala. 1975, §40-2A-7(b)(5)(a)*.

The Department moved to have the appeal concerning 2010 and 2011 dismissed because the Taxpayer failed to timely appeal the final assessments in issue within 30 days, as required by *Code of Ala. 1975, §40-2A-7(b)(5)*. The motion was granted by the Tribunal in its Preliminary Order dated September 14, 2014. The Taxpayer's appeal concerning the 2010 and 2011 final assessments is hereby dismissed for lack of jurisdiction. The Taxpayer may pay the final assessments in full and then petition the Revenue Department for a refund of amounts paid for those tax years. If the refunds are denied, the Taxpayer may appeal to the Tax Tribunal or to circuit court pursuant to *Code of Ala. 1975, §§40-2A-7(c)(5)(a) or (b)*, respectively.

Concerning the 2012 final assessment, the Revenue Department received IRS information indicating that the Taxpayer was required to file an Alabama return for that year. It consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The Taxpayer claimed on appeal that he did not reside in Alabama in 2012. He also submitted leases, utility bills, and voter registration documents showing that he had maintained a residence in Las Vegas, NV from June 2006 until October 2012, and a residence in Georgia from October 2012 until he moved to Florida in the early part of 2015.

A hearing was conducted on September 15, 2016. The Taxpayer's representative, Allen T. Pelletier, attended the hearing. Assistant Counsel Warren W. Young represented the Revenue Department.

Pelletier is the Taxpayer's mother. She testified at the hearing that the Taxpayer lived with her in Alabama as a minor until he turned 16 in 1997 or 1998 when she sent him to live with his father in Buford, Georgia. She testified that shortly after the Taxpayer moved to Georgia, she and her husband moved to Texas for employment reasons. She explained that while living with his father, the Taxpayer dropped out of school to work for his father's tile business. She further testified that the tile business contracted with the Brinker Corporation, a company that owns a nationwide chain of restaurants, to perform tile work at its restaurants located on the East Coast.

According to Pelletier, the Taxpayer eventually decided to start his own tile business and wanted to continue doing business with the Brinker Corporation. She testified that the Taxpayer focused his business on the West Coast because he did not want to compete with his father's business, and that the Taxpayer moved to Las Vegas, Nevada in 2006 to perform tile work for the Brinker Corporation in the Western part of the United States. She testified that the Taxpayer chose Las Vegas because of its centrally located airport – an airport from which the Taxpayer could conveniently fly to Western states in which his business was working. Pelletier further testified that her company, ATP Administrative

Services, handled the books and other administrative duties for the business, and also tended to the Taxpayer's personal mail. She explained for that purpose, the Taxpayer had all of his bills sent to her address in Alabama.

As indicated previously, the Taxpayer provided records, i.e., house leases, utility bills, and voter registration documents, showing that he maintained a residence in Nevada from 2006 through 2012. The Taxpayer also provided documentation showing he voted in Nevada elections in 2008 and 2010.

Pelletier testified that shortly after moving to Nevada, the Taxpayer got married and that he and his spouse lived in Nevada until their divorce. According to Pelletier, at some point after his move to Nevada, the Taxpayer began working in the Southeast, including in South Carolina, North Carolina, Tennessee, Mississippi, Louisiana, Texas, Georgia and Florida. She testified that the Taxpayer never worked in the State of Alabama. She explained that the Taxpayer's business vehicles would sometimes be parked at her house when not in use, and that he would often visit her between jobs located in the Southeast. She explained that the Taxpayer maintains an Alabama driver's license because it was easier to renew it in Alabama, and that his personal and business vehicles were registered in Alabama because it was easier to have them registered in the same state as his driver's license.

Pelletier testified that the Taxpayer married a woman from Georgia, and that the Taxpayer moved to Georgia in 2012. She stated that the Taxpayer and his second wife had a daughter and lived in Georgia until they moved to Florida in 2015. Pelletier testified that the couple separated while living in Florida, and that the Taxpayer's daughter came to live with her in Alabama in 2015. Pelletier explained that the Taxpayer moved back to

Alabama to live with her in November 2015 in an effort to gain legal custody of his daughter.

Pelletier testified that, although the Taxpayer earned income in numerous states from 2006 forward, he has never filed an income tax return in any state. Pelletier indicated that the Taxpayer is currently working to prepare Georgia returns for the tax years 2012 through 2015 and an Alabama return for the tax year 2015.

Alabama income tax is levied on individuals residing in Alabama, *Code of Ala. 1975*, § 40-18-2(1), and also on individuals residing and earning income outside of Alabama that are domiciled in Alabama. *Code of Ala. 1975*, § 40-18-2(7). A persons' domicile is his true fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So. 2d 796 (Ala. 1983). In order to change domicile from Alabama, a taxpayer must abandon Alabama and also establish a new domicile elsewhere with the intent to remain there permanently, or at least indefinitely. *Id.* The burden is on the Taxpayer asserting a change in domicile to prove that a change of domicile has occurred.

The facts show that when the Taxpayer moved to Georgia at the age of 16 in the late 90's to live with his father that he abandoned his domicile in Alabama. The Taxpayer did not intend to return to Alabama because his mother had moved to Texas, and he consequently no longer had a custodial parent living in Alabama. The facts further show that the Taxpayer did not re-establish a domicile in Alabama until November 2015. The facts also show that when the Taxpayer moved to Nevada in 2006, he intended to remain there permanently, or at least indefinitely.

Consequently, even if the Taxpayer had not abandoned his Alabama residence and changed his domicile to Georgia, he still later changed his domicile to Nevada. The fact

that the Taxpayer's mother lived in Alabama, that she handled the Taxpayer's personal and business bills and records through her administrative services business in Alabama, and that she sometimes housed the Taxpayer's personal and business vehicles at her home in Alabama is not conclusive evidence that the Taxpayer was domiciled in Alabama.

The Taxpayer's appeal of the 2010 and 2011 final assessments is hereby dismissed. The 2012 final assessment is voided. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days pursuant to *Code of Ala. 1975*, § 40-2B-2(m).

Entered October 20, 2016.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Warren W. Young, Esq.
Allan T. Pelletier